


**MEMORANDUM**

March 25, 2011

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Expedited Bill 5-11, Office of Human Rights - Human Rights Commission - Reorganization

Expedited Bill 5-11, Office of Human Rights - Human Rights Commission - Reorganization, sponsored by the Council President at the request of the County Executive, was introduced on March 8, 2011. A Joint Government Operations and Fiscal Policy/Health and Human Services Committee worksession is tentatively scheduled for April 27 at 2:00 p.m.

Expedited Bill 5-11 would reduce the jurisdiction of the Human Rights Commission and provide for the disposition of certain cases currently pending before the Office of Human Rights and the Human Rights Commission.

**Background**

In its report to the Council dated January 31, 2011, the Organizational Reform Commission (ORC), in **Recommendation #4**, recommended the County reorganize the Human Rights Commission and eliminate the Office of Human Rights.

The full text of the recommendation is below.

- a) **Human Rights Commission (HRC)** – Current Budget - **\$1,738,400** – The work of the HRC in striving to eliminate discrimination, prejudice, intolerance and bigotry serves a vital function. A broad cross-section of federal, state and County laws protect human rights, and County citizens have access to federal and state channels to specifically address those rights covered under federal and state laws. Recent analysis indicates only a few complaints of human rights violations have been filed regarding rights protected only at the County level.
- *The ORC recommends that the Council and Executive move the adjudicatory role of the Human Rights Commission to the state and federal governments, with the creation of a Human Rights Ombudsman in the office of the County Attorney to guide citizens to the appropriate authority and provide advice on options available for relief.*

## **Executive's Response**

In a memorandum to the Council President dated February 21, 2011, the Executive responded to each of the 28 recommendations in the ORC report (©8-9). The Executive supported this recommendation with conditions as follows:

### **4. Reorganize the Human Rights Commission and eliminate the office.**

#### **County Executive's Position: Support with Conditions**

I support the ORC recommendations regarding the reorganization of the Human Rights Commission. My FY12 Recommended Operating Budget will address this reorganization, but in order to retain the unique and vital work that this Commission provides, it will be necessary to retain some staffing for the Commission. This recommendation requires implementing legislation which I will forward to the Council.

On March 1, 2011, the Executive forwarded a Bill to the Council, for its consideration, reorganizing the Human Rights Commission. See ©10-11. The Bill submitted by the Executive differs from the ORC recommendation because it does not eliminate the Office of Human Rights. The Bill would reduce the caseload for the Office by requiring the Office to investigate, conciliate, and adjudicate before the Commission a case alleging only discriminatory acts that do not violate State or Federal law. If a complainant alleges a discriminatory act that also violates State or Federal law, the Office would advise the complainant of the right to file the complaint with the Maryland Commission on Human Relations, the Federal Equal Employment Opportunity Commission, or the appropriate Maryland Circuit Court.

Discriminatory acts that violate County law only include discrimination on the basis of presence of children, family responsibilities, source of income, ancestry, and gender identity. A chart showing the various groups protected under Federal, State, and County anti-discrimination laws is at ©12.

The ORC recommendation would transfer the investigation and adjudication of all cases to the Maryland Commission on Human Relations, the Federal Equal Employment Opportunity Commission, or the appropriate Maryland Circuit Court and eliminate the Office of Human Rights. Under the ORC recommendation, the Commission on Human Rights would remain as an advisory body with limited staff support.

This packet contains:

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Expedited Bill No. 5-11  
Concerning: Office of Human Rights –  
Human Rights Commission –  
Reorganization  
Revised: March 7, 2011 Draft No. 3  
Introduced: March 8, 2011  
Expires: September 8, 2012  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN EXPEDITED ACT to:**

- (1) revise the jurisdiction of the Human Rights Commission;
- (2) provide for the disposition of certain cases currently pending before the Office of Human Rights and the Human Rights Commission; and
- (3) generally amend County law related to the Human Rights Commission and the County's Human Rights law.

By amending

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Sections 27-2, 27-4, 27-5, 27-7, and 27-26A

By adding

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Section 27-4A

<b>Boldface</b>	Heading or a defined term.
<u>Underlining</u>	Added to existing law by original bill.
[Single boldface brackets]	Deleted from existing law by original bill.
<u>Double underlining</u>	Added by amendment.
[[Double boldface brackets]]	Deleted from existing law or the bill by amendment.
* * *	Existing law unaffected by bill.

*The County Council for Montgomery County, Maryland, approves the following act:*

**Sec. 1. Sections 27-2, 27-4, 27-5, 27-7, and 27-26A are amended and Section 27-4A is added as follows:**

**27-2. Commission membership and case review boards.**

\* \* \*

(b) *Commission case review boards.*

(1) The Commission must appoint a case review board of 3 individuals to consider and decide each complaint that is within its jurisdiction and that the director certifies to the Commission. The director promptly must certify a complaint to the Commission after the director determines under Section 27-7(f) whether there are reasonable grounds to believe that the respondent violated this Chapter, if:

\* \* \*

**27-4. Office of Human Rights.**

\* \* \*

(b) (1) The County Executive may assign additional staff to assist the Commission in carrying out this article. The Commission may, with the approval of the County Executive, engage the services of volunteer workers and volunteer consultants, who, subject to appropriations, may be reimbursed for out-of-pocket expenses incurred in performing volunteer services. Services of an individual as a volunteer worker or consultant must not be considered as service of employment in any merit system of the county or state.

\* \* \*

(4) Before a complaint is certified to the Commission under Sections 27-7(f)(2) or (g)(4), the director may investigate,

resolve, or conciliate the complaint if the complaint alleges a violation of this article that is subject to the jurisdiction of the Commission under Section 27-4A(b).

\* \* \*

#### **27-4A. Commission jurisdiction.**

The Commission must handle any complaint for violation of the County's human rights laws under this Chapter as follows:

(a) For a complaint that alleges a discriminatory act that is also prohibited under State or Federal law, the Commission must:

(1) advise the complainant of the right to file, after 45 days, a legal action in the appropriate State court under Section 20-1202 of the State Government Article of the Maryland Code;

(2) advise the complainant of the right to file the complaint with the applicable State or Federal agency;

(3) notify the complainant that the Commission will take no further action with respect to the resolution of the complaint; and

(4) provide the complainant with any other appropriate information concerning a potential resolution of the complaint.

(b) For a complaint that only alleges discriminatory acts that are not prohibited by State or Federal law, the Commission must:

(1) advise the complainant of the right to file, after 45 days, a legal action in the appropriate State court under Section 20-1202 of the State Government Article of the Maryland Code; and

(2) process the complaint to resolution under this article.

#### **27-5. Duties generally.**

(a) The Commission must:

\* \* \*

(9) Subject to Section 27-4A, [Initiate] handle, initiate, and receive complaints of discrimination, prejudice, intolerance, and bigotry from any person or group because of race, color, sex, age, marital status, religious creed, ancestry, national origin, disability, sexual orientation, gender identity, genetic status, presence of children, family responsibilities or source of income, that deprives that person or group of equal rights, protection, or opportunity in employment, real estate, and public accommodation. The Commission must:

\* \* \*

#### **27-7. Administration and enforcement.**

(a) *Filing complaints.* Any person subjected to a discriminatory act or practice in violation of this Article or any group or person seeking to enforce this Article may file with the Director a written complaint, sworn to or affirmed under the penalties of perjury, that must state:

- (1) the particulars of the alleged violation;
- (2) the name and address of the person alleged to have committed the violation; and
- (3) any other information required by law or regulation.

A complaint must allege facts under oath to state a violation of this Article.

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#### **27-26A. Coordination of fair housing activities.**

The [director] County Executive must assign a person or department to coordinate the activities of all County departments, offices, and agencies to prevent discrimination in housing and test compliance with housing discrimination laws.

The [director] assigned person or department must designate a staff member at an

appropriate managerial level as the County's fair housing coordinator. After consulting appropriate County officials and private citizens, the [Commission] assigned person or department must:

\* \* \*

## **Sec. 2. Transition**

This Act does not invalidate any action taken by the Office of Human Rights before this Act takes effect. This Act takes precedence over any provision in existing regulations that is in conflict with this Act.

Any case pending before the Commission at the time this Act takes effect must be adjudicated by the Commission under the provisions of Chapter 27 in effect on June 30, 2011.

Any case pending before the Office of Human Rights for investigation and conciliation at the time this Act takes effect must be handled as follows:

(a) For a case that alleges a discriminatory act that is also prohibited by State or Federal law:

(1) if the applicable statute of limitations for filing a lawsuit will not have expired as of January 1, 2012, the Director must advise the complainant to transfer the matter to the appropriate State or Federal agency or to file a legal action in a court of competent jurisdiction;

(2) if the applicable statute of limitations for filing a lawsuit will expire before January 1, 2012, the Director must complete the processing of the complaint in accordance with the provisions of Chapter 27 in effect before the amendments made by this Act and the Commission must adjudicate the complaint.

(b) Except for a case provided for under subsection (a), a case that the Commission retains jurisdiction over under Section 27-4A(b) must be

109 processed under the provisions of this Act.

110 **Sec. 3. Expedited Effective Date.**

111 The Council declares that this legislation is necessary for the immediate  
112 protection of the public interest. This Act takes effect on July 1, 2011.

113 *Approved:*

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116 Valerie Ervin, President, County Council Date

117 *Approved:*

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120 Isiah Leggett, County Executive Date

121 *This is a correct copy of Council action.*

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124 Linda M. Lauer, Clerk of the Council Date



## LEGISLATIVE REQUEST REPORT

Expedited Bill 5-11

Office of Human Rights – Human Rights Commission - Reorganization

<b>DESCRIPTION:</b>	The Bill would amend the Human Rights Law to modify the jurisdiction of the Human Rights Commission. The Commission would retain the authority to hear and decide matters involving areas of discrimination that are not within the jurisdiction of State and Federal agencies. The Office of Human Rights would continue to investigate and conciliate complaints over which the Commission would retain jurisdiction. The Commission would handle all complaints so that a person would retain the right to file a legal action in state court under state law. The Commission would refer those complaints over which the Commission would not retain jurisdiction to federal or State agencies or advise that suit be filed.
<b>PROBLEM:</b>	The County Human Rights law covers a number of areas that are duplicative of State and Federal authority. Performing these duplicate functions leads to a significant expense on the part of the County. The current budget shortfall requires significant reductions, and eliminating this duplication of effort will aid in that effort.
<b>GOALS AND OBJECTIVES:</b>	Modify the authority of the Human Rights Commission to preserve the Commission's jurisdiction over matters that are unique to County law, while reducing the overall budget for the operation of the Commission.
<b>COORDINATION:</b>	Human Rights Commission and Office of the County Attorney.
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	Not applicable.
<b>SOURCE OF INFORMATION:</b>	Fariba Kassiri, Assistant Chief Administrative Officer Erin J. Ashbarry, Office of the County Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Not applicable.
<b>PENALTIES:</b>	Not Applicable.



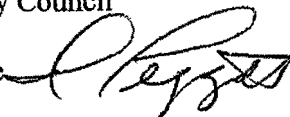
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

## MEMORANDUM

February 21, 2011

TO: Valerie Ervin, President, County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Organizational Reform Commission Recommendations

This memorandum provides the County Council with my recommendations regarding the final report of the Organizational Reform Commission (ORC) which was released on January 31, 2011. I am deeply grateful to all of the ORC members, who were very generous in volunteering their time and expertise and spent hundreds of hours in developing the report. As the attached materials indicate, I am supportive of most of the ORC recommendations and urge the Council to approve the recommendations as outlined in my attached response.

The Commission has acknowledged that implementing its recommendations will be difficult, time consuming and complex. However, this is not a sufficient justification for failing to undertake the implementation effort. In addition, the controversy and opposition that some of these recommendations have engendered are also not alone a basis for rejecting the recommendations. Challenging the status quo will always provoke opposition from entrenched interests and those not willing to undertake necessary changes. At a time when we have requested that our residents shoulder increases in taxes (i.e. the energy, telephone and property taxes) and we have reduced several important public safety and safety net services, and reduced funding for education, we owe it to the taxpayers of this County to undertake the arduous task of further restructuring our government in order to achieve every possible efficiency and savings. Furthermore, my Fiscal Year 2012 Recommended Operating Budget is very likely to include additional reductions to many vital programs and services. To ignore possible long-term savings at this critical time would be a disservice to our taxpayers.

I realize that a majority of the County Council has already indicated that at this time they do not support State legislation that would enable the Council to merge Park Police and County Police if it later chose to do so. This legislation is a necessary first step in implementing one of the most prominent recommendations of the ORC -- i.e.,

Valerie Ervin, President, County Council

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a merger of the Maryland-National Capital Park and Planning Commission (M-NCPPC) Park Police with the County Police Department.<sup>1</sup> The Council's recent action was not taken in the context of the broader ORC report, this recommendation and the upcoming March 15<sup>th</sup> budget recommendations. Unfortunately, the Council will have to make extremely difficult decisions in the FY12 budget deliberations, including reductions to services and programs, cuts in staffing levels, and possibly significant changes to pay and benefits for County employees. As I stated at the time that the Council discussed the proposed State legislation, I do not believe it was prudent for the Council to reject that potential merger, and the savings and efficiencies that would arise from that merger, before it fully evaluates all of the implications of that decision in the context of all of the issues that relate to the FY12 operating budget.

I respectfully urge you to comprehensively evaluate the ORC recommendations along with my recommendations and the implications for the FY 12 budget and beyond. My staff and I stand ready to work with you to ensure that the efficiency and effectiveness of County Government is maximized.

#### Attachments

#### copies:

Organizational Reform Commission Members  
Stephen B. Farber, County Council Staff Director  
Christopher S. Barclay, President, Board of Education  
Dr. Jerry D. Weast, Superintendent, Montgomery County Public School  
Jerry Robinson, Acting Executive Director, Housing Opportunities Commission  
Francoise Carrier, Chair, Montgomery County Planning Board  
DeRionne P. Pollard, Ph.D., President, Montgomery College  
Jerry N. Johnson, General Manager/CEO, Washington Suburban Sanitary Commission  
Executive Branch Department and Office Directors  
Fariba Kassiri, Assistant Chief Administrative Officer  
Jennifer Hughes, Special Assistant to the County Executive

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<sup>1</sup> MC/PG 112-11 - Maryland-National Capital Park and Planning Commission-County Police Authority, Metropolitan District Tax, and Transfer of Property



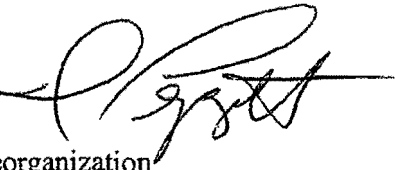
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
*County Executive*

MEMORANDUM

March 1, 2011

TO: Valerie Ervin, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Human Rights Commission - Reorganization

I am forwarding to the Council, for its consideration, legislation that re-orientes the focus of the County's Human Rights law by eliminating the duplication of effort that currently exists between the enforcement functions of the County's Office of Human Rights and the Commission on Human Rights and comparable enforcement functions of Maryland and federal human rights agencies. I have reached the difficult decision to recommend this legislation only because of the urgent need to reduce County expenditures to help close the projected \$300 million gap for the FY12 budget.

The Montgomery County Organizational Reform Commission (ORC) recommended that the adjudicatory role of the Human Rights Commission be moved to the state and federal governments. I have concluded that the ORC recommendation goes too far, and have recommended legislation that I believe strikes an appropriate balance in preserving the rights of County residents under the County's Human Rights law with the need to reduce County expenditures.

The attached legislation changes the authority of the Human Rights Commission to adjudicate only those cases that allege a violation of the County's Human Rights law that are unique to Montgomery County. The Office of Human Rights will investigate and attempt to conciliate those cases that assert an act of discrimination that is unique to Montgomery County under the County's Human Rights law. Since the number of cases that will be handled by the Office of Human Rights will be greatly reduced, the size of the office may be reduced, which should provide the County with a reduction in expenditures.

For complaints that allege a discriminatory act that is also prohibited under state or federal law, the Commission must handle the complaint by advising the complainant of the right to file a legal action in state court under the state human rights law or to file a complaint with the applicable state or federal enforcement agency. A complainant will retain the right to

Valerie Ervin, President  
March 1, 2011  
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enforce all aspects of the County's Human Rights law, including provisions that prohibit acts of discrimination that are not unique to the County, through the state court system.

I have long been, and continue to be, in full support of the County's Human Rights law. Nevertheless, the urgent need to reduce County expenditures has led me to conclude that it is necessary to make these painful revisions to the mission of the Human Rights Commission. I believe this legislation strikes the appropriate balance in preserving the rights of County residents under the County's Human Rights law with the need to reduce County expenditures.

IL:tjs

Attachment

## Anti-Discrimination Provisions in Federal, State, and Montgomery County Law

Protected Group	Federal	State	County
Age	✓	✓	✓
Disability	✓	✓	✓
Genetic Information	✓	✓	✓
National Origin	✓	✓	✓
Race	✓	✓	✓
Color	✓	✓	✓
Religion	✓	✓	✓
Sex	✓	✓	✓
Marital Status		✓	✓
Sexual Orientation		✓	✓
Presence of Children			✓
Family Responsibilities			✓
Source of Income			✓
Gender Identity			✓
Ancestry			✓